

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

HARVEY KOERSELMAN;

O'Brien County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2012-SW- 08

TO: Harvey Koerselman
1312 Western Ave.
Sheldon, IA 51201

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Harvey Koerselman for the purpose of resolving violations related to the storage and handling of discarded appliances. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Bryon Whiting, , Field Office 3
Iowa Department of Natural Resources
1900 N. Grand, Suite E17
Spencer, IA 51301-2200
Phone: 712-262-4117

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515-281-8889

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Harvey Koerselman

III. STATEMENT OF FACTS

1. Harvey Koerselman owns a property at 1017 Western Avenue in Sheldon, Iowa. Discarded appliances and other solid waste have been accumulated at the property.
2. On January 21, 2005, the DNR received a complaint alleging that an unknown individual was collecting appliances at 1120 Railroad Avenue in Sheldon. The complainant alleged that the appliances were being collected by an unlicensed appliance demanufacturer.
3. On January 23, 2006, the DNR received a second complaint that discarded appliances remained at 1120 Railroad Ave., Sheldon and also that the owner had sold the site to the local grain elevator.
4. On February 22, 2006, the DNR inspected the complaint site and found more than 100 discarded appliances scattered throughout the property. The property owner at the time was Harvey Koerselman. Mr. Koerselman was instructed to clean up the property.
5. On January 5, 2007, the DNR inspected the subject property and found that all solid waste except the discarded appliances had been removed. On January 18, 2007, the DNR contacted Farmers Coop and was informed that it was purchasing the property at 1120 Railroad Ave., Sheldon from Harvey Koerselman and that the site would be cleaned up by either the seller or the buyer.
6. On February 21, 2007, the DNR issued a Notice of Violation to Harvey Koerselman due to the illegal open dumping of discarded appliances at 1120 Railroad Ave., Sheldon. The Notice of Violation informed Mr. Koerselman of the applicable law and required the cleanup of all existing discarded appliances and proper disposal by April 1, 2007.
7. On March 15, 2007, the DNR received a scale ticket from licensed appliance demanufacturer Tim Henning showing that 2.29 tons of appliances were removed from the property at 1120 Railroad Ave., Sheldon.
8. On March 29, 2007, Tim Henning contacted the DNR and indicated that all discarded appliances had been removed from the property at 1120 Railroad Ave., Sheldon. On March 30, 2007, the DNR received a scale ticket documenting the removal of an additional 1.80 tons of appliances from the property.
9. On May 2, 2011, the DNR received a complaint alleging that Harvey Koerselman was open dumping discarded appliances near Western Avenue, Sheldon.
10. On May 3, 2011, the DNR inspected a property at 1017 Western Avenue, Sheldon and observed various discarded appliances and solid waste on the property. The appliances were not stored in a manner to prevent damage or avoid the release of hazardous compounds into the environment. The property was determined to be owned by Harvey Koerselman.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Harvey Koerselman

11. On May 9, 2011 the DNR reinspected the property at 1017 Western Ave. and observed that some discarded appliances had been removed and other, additional, discarded appliances had been deposited at the site. Photographs were taken.

12. On May 19, 2011, a Notice of Violation was issued to Harvey Koerselman for the illegal disposal of discarded appliances. Mr. Koerselman was notified that this matter was being referred for the initiation of enforcement action.

13. On June 29, 2001, the DNR notified Harvey Koerselman of the intent to undertake an enforcement action and assess administrative penalties due to the violations described in this order.

14. On July 8, 2011, Harvey Koerselman contacted the DNR and agreed to remove all appliances and solid waste from the property.

15. On August 5, 2011, the DNR conducted a follow-up inspection. On that date it was observed that all solid waste and discarded appliances had been removed from the property with the exception of 6 waste tires neatly stacked at the site.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. Iowa Code section 455D.6(6) requires the Director of the DNR to develop a strategy and recommend to the Commission the adoption of rules necessary to implement a strategy for white goods.

2. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director.

3. In order to carry out the purposes of Iowa Code sections 455B.304 and 455D.6(6), the Commission has adopted IAC chapter 567-118 "Discarded Appliance Demanufacturing". The requirements applicable to a permit holder are set forth in IAC chapter 567-118.

4. Rule 118.2(2) provides that a person must obtain an appliance demanufacturing permit from the DNR before conducting any demanufacturing activities. The above facts demonstrate non-compliance with this provision.

5. 567 IAC 118.2(3) requires that any person engaged in demanufacturing appliances must be in compliance with all federal and state laws relating to the management and disposition of all hazardous wastes, hazardous materials and refrigerants.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Harvey Koerselman

6. Pursuant to 567 IAC 118.4(1), any person collecting and storing discarded appliances must store the appliances so as to prevent electrical capacitors, refrigerant lines and compressors, and mercury-containing components from being damaged and allowing a release into the environment.

7. Pursuant to 567 IAC 118.4(2), no method of handling discarded appliances may be used which in any way damages, cuts or breaks refrigerant lines or crushes compressors, capacitors, or mercury-containing components that may cause a release of refrigerant, PCBs or mercury into the environment.

8. 40 CFR 82.162 adopted by reference by DNR at 567 IAC 118.9, requires that all persons disposing of appliances must certify to the EPA that they have acquired certified recovery or recycling equipment and are complying with applicable operating requirements.

V. ORDER

THEREFORE, the DNR orders and Harvey Koerselman agrees to do the following:

1. Harvey Koerselman shall not accept, pick-up or otherwise acquire any discarded appliances unless he has first obtained an appliance demanufacturing permit from the DNR.

2. In the event that a third-party dumps discarded appliances on the property of Harvey Koerselman, he shall immediately notify the DNR and shall also immediately contact a permitted appliance demanufacturer for the removal of the appliances. Mr. Koerselman is free to take such additional actions as he believes are appropriate, such as filing a complaint with law enforcement officials or taking private legal action against any illegal dumper.

3. If Harvey Koerselman voluntarily accepts discarded appliances without first obtaining an appliance demanufacturing permit, he shall be subject to a stipulated penalty in the amount of \$100 per appliance accepted. The stipulated penalties shall be paid in full within 30 days after written notice from the DNR. The failure to comply with the notification provisions set forth in paragraph #2 shall raise a rebuttable presumption that the appliances were voluntarily accepted.

VI. PENALTY

1. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Harvey Koerselman

Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with stipulated penalties. The administrative penalty is determined as follows:

I. Economic Benefit. Harvey Koerselman has achieved an economic benefit by failing to comply with discarded appliance demanufacturing and solid waste requirements. Costs avoided include hazardous waste disposal costs, solid waste disposal costs, appliance demanufacturing permitting costs and labor costs. The subsequent removal of the appliances provided partial mitigation for this economic benefit. The stipulated penalty set forth herein is established in consideration of these factors.

II. Gravity of the Violations. Failure to properly dispose of solid waste threatens the integrity of the solid waste program. Discarded appliances contain hazardous wastes including PCBs, mercury, and refrigerants. The improper handling, storage, and disposal of discarded appliances threaten the release of hazardous wastes into the atmosphere. The illegal disposal of solid waste threatens groundwater and creates a home for mosquitoes, rats, and other vectors. The stipulated penalty set forth herein is established in consideration of these factors.

III. Culpability. Harvey Koerselman has been previously informed of the applicable regulations and given an opportunity to comply. Mr. Koerselman asserts that the discarded appliances were illegally dumped on his property and not voluntarily accepted. The stipulated penalty set forth herein is established in consideration of these factors.

IV. Mitigating Factor Harvey Koerselman has provided documentation to establish that his employment is being terminated on October 2, 2011. The DNR has taken this economic situation into account when determining the appropriate penalty in this case.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of Harvey Koerselman. By signature to this administrative consent order, all rights to appeal this administrative consent order are waived.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
Harvey Koerselman

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.307. Compliance with paragraphs V.1-V.2 of Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to issue an administrative order or to refer to the Attorney General's Office in lieu of collecting stipulated penalties pursuant to this order.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 7th day of
March, 2012.



HARVEY KOERSELMAN

Dated this 18 day of
Feb., 2012.

Field Office 5; Bryon Whiting; VI.C

54082 MAR05'12 10:59